

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Chapman
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FILE: B-208418.2; B-213046.2 **DATE:** April 23, 1984

MATTER OF: Simulators Limited, Inc.

DIGEST:

1. Agency failure to comply with Defense Acquisition Regulation § 3-805.4(b) (Defense Acquisition Circular No. 76-17, September 1, 1978), which provides that, where the competitive range has been established, only those offerors within the competitive range, as opposed to all firms solicited, should be sent an amendment to the solicitation, is a mere procedural violation that does not prejudice any offerors. In fact, the record indicates that the agency considered only the proposals submitted in response to the amendment of those offerors already determined to be in the competitive range.
2. Protest allegation that the solicitation specifications favor two particular offerors is untimely where the allegation is filed with GAO after the due date for submission of initial proposals. Where a protest incorporates multiple bases, each individual basis of protest must independently satisfy the timeliness standards established in our Bid Protest Procedures.
3. Request for reconsideration is untimely where it is not filed within 10 working days after the protester knew or should have known the basis for reconsideration.

Simulators Limited, Inc. (Simulators), protests any award of a contract under request for proposals (RFP) No. DAAH01-83-R-0244 issued by the United States Army Missile Command, Redstone Arsenal, Alabama, for an estimated quantity of radio-controlled miniature aerial targets. Simulators also requests reconsideration of our decision Simulators Limited, Inc., B-208418, November 23, 1982, 82-2 CPD 473.

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The protest is denied in part and dismissed in part. We dismiss the request for reconsideration as untimely.

First, Simulators contends that the Army violated Defense Acquisition Regulation (DAR) § 3-805.4(b) (Defense Acquisition Circular No. 76-17, September 1, 1978) by sending an amendment to the RFP to all firms originally solicited, as opposed to only the firms within the competitive range, after the competitive range had been established. DAR § 3-805.4(b) states, in pertinent part:

"The stage in the procurement cycle at which the changes occur and the magnitude of the changes shall govern which firms should be notified of the changes. If proposals are not yet due, the amendment should normally be sent to all firms solicited. If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors. If the competitive range has been established, only those offerors within the competitive range should be sent the amendment. . . ."

Even accepting Simulator's argument, we find that the Army's alleged violation of DAR § 3-805.4(b) is a mere procedural violation that did not prejudice Simulators or any other offeror. The record indicates that the Army, in fact, only considered the proposals submitted in response to the amendment of those offerors within the competitive range, which procedure comports with the intent of DAR § 3-805.4(b).

Second, Simulators asserts that the solicitation favors two particular offerors who have prior approved designs of electronic equipment required by the specifications.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), provide that protests based on alleged improprieties in a solicitation which are apparent prior to the due date for submission of initial proposals must be filed prior to the due date. Since Simulators is protesting that the specifications favored two particular offerors, the due date for submission of initial proposals was September 30, 1983, and Simulators did not raise this issue of protest until its

submission filed with our Office on February 13, 1984, this issue is untimely. Further, where a protest incorporates multiple bases, we have held that each individual basis of protest must independently satisfy the timeliness standards established in our procedures. Tracor Jitco, Inc., B-208476, January 31, 1983, 83-1 CPD 98.

As to Simulators' request for reconsideration, in our prior decision, we held that questions and answers relating to the specifications place offerors on notice that the incumbent contractor's front-mounted engine design for target aircraft satisfies the solicitation requirements for visual representation of specific aircraft whose distinguishing feature is the design of its nose. Therefore, we found that Simulators' contention that only its rear-mounted engine design will satisfy the visual appearance requirement was without merit. Simulators now argues that an item in the amendment which is the subject of protest under the instant RFP pertaining to the visual appearance of aircraft is a result of field use of targets procured under the solicitation involved in our prior decision and is an admission by the Army of the correctness of Simulators' technical presentation in its prior protest. Simulators also claims that in a telephone conversation on January 27, 1984, an Army procuring official did not deny that the Army issued the item in the amendment for the reasons Simulators alleges. Simulators did not request reconsideration of our prior decision until its submission filed with our Office on February 13, 1984.

Our Bid Protest Procedures, 4 C.F.R. § 21.9(b) (1983), require that requests for reconsideration must be filed not later than 10 working days after the basis for reconsideration is known or should have been known, whichever is earlier. Here, Simulators' contends in its request for reconsideration that the amendment to the instant RFP issued on December 9, 1983, demonstrated the correctness of its technical presentation in its original protest. We find that Simulators knew or should have known the basis for reconsideration upon receiving the amendment. Since Simulators' request for reconsideration was filed more than 2 months after the amendment was issued, we conclude that Simulators failed to file its request for reconsideration within 10 working days after it knew or should have known

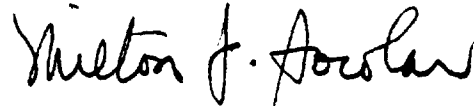
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the basis for reconsideration. Therefore, the request for reconsideration will not be considered on the merits.

The protest is denied in part and dismissed in part.
The request for reconsideration is dismissed.



Acting Comptroller General
of the United States